National Consumer Law Center, Inc.
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Washington, D.C 20032
202 452-6252 December 1, 2003

The Honorable Michael Oxley
Chairman, Financial Services Committee
House of Representatives
2308 Rayburn House Office Building
Washington, D.C.

The Honorable Barney Frank
Ranking Member, Financial Services Committee
House of Representatives
2252 Rayburn House Office Building
Washington, D.C. 20515

Re: The Skyrocketing Foreclosure Rate Caused by Subprime Mortgages

Dear Chairman Oxley and Representative Frank:

In a letter to you dated November 21, 2003, the Mortgage Bankers Association (MBA) found fault with various aspects of the testimony I provided at the hearings on predatory lending on November 5, 2003: The use of the term "foreclosure rate" was criticized. The MBA said that because I used data from the 3rd quarter of 2002, rather than the 2nd quarter 2003, my information was misleading. My assertion that foreclosures are "skyrocketing" was questioned. Finally, the MBA disagreed with my statement that the excessive loss of homes due to the practices in the subprime mortgage industry is a problem that must be addressed.

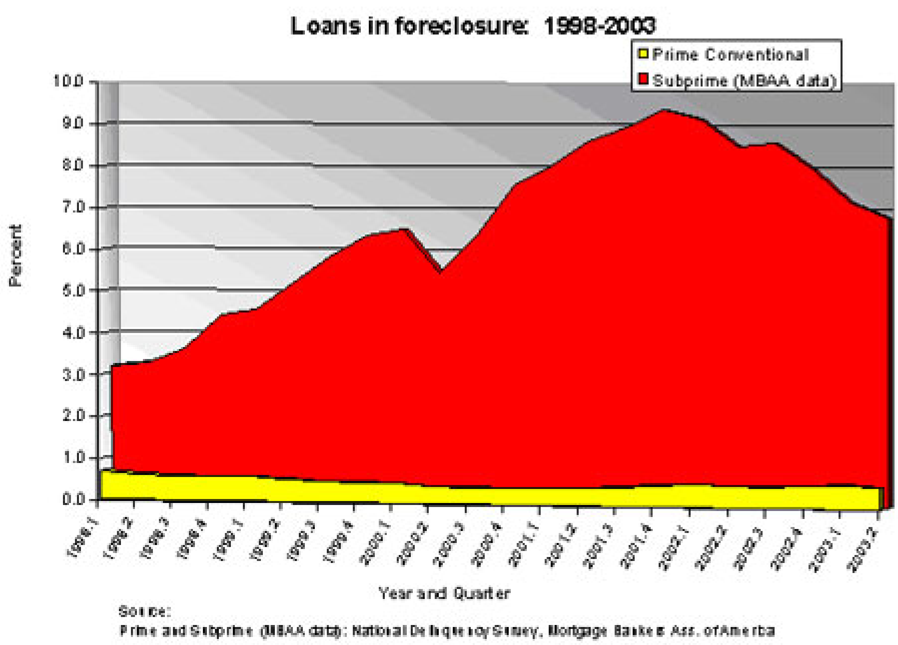
There were no mistakes – either in fact or in characterizations – in my testimony, as detailed below. Our fundamental point is that foreclosures are increasing over the long term – not quarter to quarter, but each year. The MBA is taking the position that mortgage lending that leads to high foreclosure rates is acceptable because it is known to be high risk. We are challenging the acceptability of just this point. At what point does lending which stands a high risk of causing the loss of a family's home become unacceptable? Does this Congress condone mortgage lending which has a 10% chance of foreclosure? Should it be legal for mortgage lending to be permitted with the anticipated risk that the family will stand a 20% chance of losing its home? In the past Congress has expressed concern when the foreclosure rate for FHA loans reached 3%. What has changed?

Foreclosure Rate. The term "foreclosure rate" comes directly from the MBA's own data, and is cited as such by the U.S. Census Bureau in its Table # 1160 (U.S. Census Bureau, Statistical Abstract of 2002).1 As the MBA says in its National Delinquency Survey (copy attached), the term “Foreclosure Rate” is described separately from delinquency rates. Within the term “foreclosure rate” there is a distinction made between the percentage of loans in foreclosure and the percentage of loans for which the foreclosure process has been initiated in the quarter covered by the report. However, these two numbers are actually confused by the MBA in their letter.

Foreclosures Started versus Loans in Foreclosure. As is evident from the attached MBA materials, there are two numbers reported by the MBA which relate to the foreclosure rate of subprime loans in each quarter. These two numbers measure the foreclosures in different ways.

The term “Foreclosures started” refers to the percentage rate of loans for which a foreclosure has been initiated during the quarter – in other words this is the ratio of the number of loans sent to the foreclosure process, as compared to the total number of subprime mortgages in the pool. For subprime mortgages, this number has varied from a low of 1.11% in 1998, to a high of 3.22 in 2000. The number the MBA wants you to focus upon – the number of new foreclosures started in the 2nd quarter of 2003 – is misleading because it is not an annual number. The total new foreclosures started for the whole year will be closer to the sum of the numbers for the four quarters (or 8.54% for the whole of the year 2002), although this statistic is somewhat variable because the total number of loans in the pool changes between quarters.

The term “In foreclosure” refers to the comparison between the total number of loans in the process of foreclosure compared to the total number of subprime mortgages in the pool. This rate reflects the total number of homeowners who are currently facing the loss of their homes through the legal process of foreclosure. This number has varied from a low of 3.18% in the 1st quarter of 1998 to a high of 9.35% in the 4th quarter of 2001.



Most Recent Data. The MBA is correct in the statement that the most recent data available for the number of subprime loans in the foreclosure process – for the 2nd quarter of 2003 – is 6.81%. This means that as of the end of June, 2003 between six and seven of every one hundred subprime mortgage loans in the pool, were in the midst of the foreclosure process. In other words, one out of every sixteen outstanding subprime loans has legally failed. The number I used in my data was for the 3rd quarter of 2002 – 8.58% – because this was the latest information I had at the time. The intended point of this section of the testimony was to highlight the huge difference between the percentage of prime mortgage loans in foreclosure as compared to the percentage of subprime loans for which homeowners face legal process to lose their homes. The foreclosure rate for prime loans during this same 2nd quarter of 2003 was only .53% -- or 1/12 of the foreclosure rate for subprime loans.

Foreclosures Are Skyrocketing. The number of homes lost to foreclosure each year has climbed steadily for the past twenty years. According to the U.S. Census Bureau's statistical abstract, the number of homes in foreclosure in the year 1980 was 114,000, while the number of homes in foreclosure in the year 2001 (the latest year in which information is available) was 555,000. This is an increase of over 250%. Yet, even these statistics mask the more dramatic increases in foreclosures in some neighborhoods– cities such as Philadelphia and Chicago where the foreclosures have tripled in recent years.2

Escalating Foreclosures Must Be Addressed. The assertions in the testimony, provided on behalf of the low income clients of the National Consumer Law Center, as well as Consumers Union, the National Association of Consumer Advocates and the U.S. Public Interest Research Group, are that the policies of the federal government regarding mortgage regulation must change. The emphasis for future legislation must be on stopping the problem of predatory lending, not simply preserving access to credit. Preserving access to credit is not the problem in today's market. There is so much access to credit that American consumers are overwhelmed by it, and harmed by it. Too much credit is not a good thing. Too much credit drives loss of equity, bankruptcies, insolvencies, and foreclosures. Too much credit only benefits the creditors – not the consumers. Too much credit translates into too much debt.

Therefore, the MBA's assertion that higher delinquency rates and the higher foreclosure rates in the subprime market are to be expected and excused because these are riskier loans raises exactly the question that must be resolved: Is it acceptable for mortgage loans to be made which have a 1 in 16 chance of foreclosure, just to preserve access to credit? Or should regulation prevent some of these loans from being made, so that these homes would not be in legal jeopardy?

These are the issues with which this Committee must grapple in the coming months. We look forward to working with you on these and related issues. Thank you for the opportunity to respond on these points.

Sincerely,

Margot Saunders
Managing Attorney

cc. Members, Committee on Financial Services

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1 The Census Data does not differentiate between prime and subprime loans in its delinquency or foreclosure rates.

2 See, e.g. National Training and Information Center, Preying on Neighborhoods – Subprime Mortgage Lending and Chicagoland Foreclosures, September 21, 1999, finding that in the Chicago area the actual number of home foreclosures doubled in the five year period between 1993 and 1998, at 12. http://www.ntic-us.org/preying/preying.pdf